

PINOLE REDEVELOPMENT AGENCY

ASSET TRANSFER REVIEW

Review Report

January 1, 2011, through January 31, 2012



JOHN CHIANG
California State Controller

December 2012



JOHN CHIANG
California State Controller

December 12, 2012

Belinda B. Espinosa, City Manager
City of Pinole
Pinole Redevelopment/Successor Agency
2131 Pear Street
Pinole, CA 94564

Dear Ms. Espinosa:

Pursuant to Health and Safety (H&S) code section 34167.5, the State Controller's Office (SCO) reviewed all asset transfers made by the Pinole Redevelopment Agency to the City of Pinole or any other public agency during the period January 1, 2011, through January 31, 2012. As you know, this statutory provision explicitly states that, "The Legislature hereby finds that a transfer of assets by a redevelopment agency during the period covered in this section is deemed not to be in furtherance of the Community Redevelopment Law and is thereby unauthorized." Therefore, our review included an assessment of whether each asset transfer was allowable and whether it should be returned to the Pinole Redevelopment Successor Agency.

Our review applied to all assets, including but not limited to, real and personal property, cash funds, accounts receivable, deeds of trust and mortgages, contract rights and any rights to payment of any kind. We also reviewed and determined whether any unallowable transfers of assets to the City of Pinole or any other public agencies have been reversed.

Our review disclosed that the Pinole Redevelopment Agency transferred \$68,342,749 in assets. This included unallowable transfers of assets totaling \$24,514,621 or 35.87%, which must be turned over to the Successor Agency. Pursuant to Health and Safety Code section 34167.5, the City of Pinole is ordered to reverse all unallowable transfers identified in this report and turn over the assets to the Pinole Redevelopment Successor Agency.

If you have any questions, please contact Mr. Steven Mar, Bureau Chief, Local Government Audits Bureau, at (916) 324-7226.

Sincerely,

Original signed by

JEFFREY V. BROWNFIELD

Chief, Division of Audits

JVB/bf

cc: Richard Loomis, Finance Director
Pinole Redevelopment/Successor Agency
City of Pinole
Debbie Long, Chairperson of Oversight Board
Pinole Redevelopment/Successor Agency
City of Pinole
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Asset Transfer Assessment Review Report

Summary

The State Controller's Office (SCO) reviewed the asset transfers made by the Pinole Redevelopment Agency for the period of January 1, 2011, through January 31, 2012. Our review included, but was not limited to, real and personal property, cash funds, accounts receivable, deeds of trust and mortgages, contract rights, and any rights to payments of any kind from any source.

Our review disclosed that the Pinole Redevelopment Agency transferred \$68,342,749 in assets. This included unallowable transfers of assets totaling \$24,514,621 or 35.87%, which must be turned over to the Successor Agency.

Background

In January of 2011, the Governor of the State of California proposed statewide elimination of redevelopment agencies (RDAs) beginning with the fiscal year (FY) 2011-12 State budget. The Governor's proposal was incorporated into Assembly Bill 26 (ABX1 26, Chapter 5, Statutes of 2011, First Extraordinary Session), which was passed by the Legislature, and signed into law by the Governor on June 28, 2011.

ABX1 26 prohibited RDAs from engaging in new business, established mechanisms and timelines for dissolution of the RDAs, and created RDA Successor Agencies to oversee dissolution of the RDAs and redistribution of RDA assets.

A California Supreme Court decision on December 28, 2011 (California Redevelopment Association et al. v. Matosantos) upheld ABX1 26 and the Legislature's constitutional authority to dissolve the RDAs.

ABX1 26 was codified in the Health and Safety Code (H&S Code) beginning with section 34161.

In accordance with the requirements of H&S Code section 34167.5, the State Controller is required to review the activities of redevelopment agencies (RDAs), "to determine whether an asset transfer has occurred after January 1, 2011, between the city or county, or city and county that created a redevelopment agency, or any other public agency, and the redevelopment agency," and the date at which the RDA ceases to operate, or January 31, 2012, whichever is earlier.

The SCO has identified transfers of assets that occurred during that period between the Pinole Redevelopment Agency, the City of Pinole, and/or other public agencies. By law, the SCO is required to order that such assets, except those that already had been committed to a third party prior to June 28, 2011, the effective date of ABX1 26, be turned over to the Successor Agency. In addition, the SCO may file a legal order to ensure compliance with this order.

Objectives, Scope, and Methodology

Our review objective was to determine whether asset transfers that occurred after January 1, 2011, and the date upon which the RDA ceased to operate, or January 31, 2012, whichever was earlier, between the city or county, or city and county that created an RDA, or any other public agency, and the RDA, were appropriate.

We performed the following procedures:

- Interviewed Successor Agency personnel to gain an understanding of the Successor Agency operations and procedures.
- Reviewed meeting minutes, resolutions, and ordinances of the city council and the RDA.
- Reviewed accounting records relating to the recording of assets.
- Verified the accuracy of the Asset Transfer Assessment Form. This form was sent to all former RDAs to provide a list of all assets transferred between January 1, 2011, and January 31, 2012.
- Reviewed applicable financial reports to verify assets (capital, cash, property, etc.).

The SCO has initiated the review associated with AB 1484, and will complete that at a later date.

Conclusion

Our review disclosed that the Pinole Redevelopment Agency transferred \$68,342,749 in assets during the period of January 1, 2011 through January 31, 2012, including unallowable transfers of assets totaling \$24,514,621 or 35.87%, of the transferred assets. Those assets must be turned over to the Successor Agency for use in paying off all allowable obligations and bond debt.

Unallowable Asset Transfers:

Unallowable asset transfers to City of Pinole	\$ 24,514,621
Total unallowable transfers	<u>\$ 24,514,621</u>

The agency named above as recipient of the unallowable asset transfers is ordered to immediately reverse the transfers, and turn over the assets identified in this report to the Successor Agency.

Views of Responsible Official

We issued a draft review report on November 6, 2012. Belinda B. Espinosa, City Manager, responded by letter dated November 15, 2012, disagreeing with the review results. The city's response is included in this final review report as an attachment.

Restricted Use

This report is solely for the information and use of the City of Pinole, the Pinole Redevelopment Successor Agency, the Pinole Successor Agency Oversight Board, and the SCO; it is not intended to be and should not be used by anyone other than these specified parties. This restriction is not intended to limit distribution of this report, which is a matter of public record when issued final.

Original signed by

JEFFREY V. BROWNFIELD
Chief, Division of Audits

December 12, 2012

Finding and Order of the Controller

FINDING— Unallowable asset transfers to the City of Pinole

The Pinole Redevelopment Agency (RDA) transferred \$24,514,621 in assets to the City of Pinole (City). The purpose of the asset transfers was to protect redevelopment agency resources from potential termination as a result of the new legislation. All of the asset transfers to the City occurred during the period of January 1, 2011, through January 31, 2012, and the assets were not contractually committed to a third party prior to June 28, 2011. Those assets consisted of capital assets.

Unallowable asset transfers were as follows:

- On February 24, 2011, the RDA transferred \$22,436,257 in land and improvements to the City. To accomplish those transfers, the City and the RDA entered into a disposition and development agreement and assignment agreement under Council Resolution No. 2011-11. The following two properties were sold:
 - On July 20, 2011, the City sold the 2401 San Pablo Avenue mixed-use property for a loss of \$271,597. There was no resolution for this transaction.
 - On December 6, 2011, the City sold two properties, Pinole Vista Shopping Center and Pinole Valley Shopping Centers, for a gain of \$2,349,961. To accomplish those transfers, the City and the RDA entered into a joint purchase and sale agreement with TKG Pinole Valley, LLC under Council Resolution No. 2011-90 and Redevelopment Agency Resolution No. 23-2011.

On March 10, 2011, the RDA counsel filed a validation action for the assets transferred on February 24, 2011. On July 5, 2011, the City and the RDA received a Judgment of Validation from the Superior Court of the State of California, County of Contra Costa, obtaining approval for the assets transferred on February 24, 2011.

The Judgment of Validation cited by the City does not override the provisions in ABX1 26 and AB 1484, which prohibit transfers of property such as the ones made under Resolution No. 2011-11 to the City; nor does it prevent the Controller from requiring that such assets be turned over to the Successor Agency for disposition in accordance with the provisions of these two bills.

Pursuant to H&S Code section 34167.5, the RDA may not transfer assets to a city, county, city and county, or any other public agency after January 1, 2011. Those assets should be returned to the Successor Agency for disposition in accordance with H&S Code section 34177 (d) and (e).

Order of the Controller

Based on H&S Code section 34167.5, the City of Pinole is ordered to reverse the transfers of assets, described in Schedule 1, in the amount of \$24,514,621 plus interest earned, and turn over the assets to the Successor Agency.

The Successor Agency is directed to properly dispose of those assets in accordance with H&S Code sections 34177(d) and (e).

City's Response

The city of Pinole disagrees with the findings of the State Controller. As referenced in the Draft Report, the Redevelopment Agency transferred several properties to the City pursuant to City Resolution No. 2011-11 and Agency Resolution No. 05-11. On July 5, 2012, the Superior Court of the State of California entered a Judgment of Validation with respect to asset transfers made by the Redevelopment Agency. A portion of the court decree reads:

“10. All person are hereby permanently enjoined and restrained from the institution of any action or proceeding challenging, inter alia, the validity of the City Resolution No. 2011-11 and Agency Resolution No. 05-11, or any matters herein adjudicated or which at this time could have been adjudicated against the City or Agency and against all other persons, and this judgment shall be forever binding and conclusive as to all such matters.”

The City of Pinole believes that the court judgment filed on July 5, 2011 prevents the Controller from requiring that the assets set forth in the Draft Report from being turned over to the Successor Agency for disposition under AB x1 26 and AB 1481. In addition, the City reserves all rights to raise other legal arguments with respect to this report as may be necessary.

SCO's Comment

As previously stated, the Judgment of Validation cited by the City does not override the provisions in ABX1 26 and AB 1484. The Finding and Order of the Controller remain as stated.

**Schedule 1—
RDA Assets Transferred to the City of Pinole
January 1, 2011, through January 31, 2012**

<u>Unallowable Transfers to the City of Pinole:</u>	<u>Amount</u>
Capital Assets	
Land and Improvements ¹	\$ 22,436,257
Current Assets	
Cash Difference from the Sale of Properties	
2401 San Pablo Avenue Mixed Use ²	(271,597)
Pinole Vista and Pinole Valley Shopping Centers ³	2,349,961
Total Unallowable Transfers – City of Pinole	\$ 24,514,621

¹ Amount is net of depreciation.

² Amount reflects the sale of a mixed-use commercial/housing asset valued on the books for \$2,189,124, of which \$835,124 actually was transferred to the City on February 24, 2011. This property subsequently was sold for \$1,561,460 and, as a result, the non-house portion of \$563,527 was reflected in the asset transfer form even though it should be \$271,597 higher and subject to the provisions of ABX1 26.

³ Pinole Vista Shopping Center and Pinole Valley Shopping Center were transferred to the City with a book value of \$10,746,570 and were subsequently sold for \$13,100,000 (\$266,000 and \$12,834,000 for ground lease payments and cash, respectively). The sale amount of \$12,834,000 was being held in separate investment accounts and should be turned over to the Successor Agency. The investment accounts held \$12,830,531 as of June 30, 2012.

**Attachment—
City’s Response to
Draft Audit Report**



CITY OF PINOLE

City Manager's Office

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November 15, 2012

Mr. Steven Mar, Chief
Local Government Audits Bureau
State Controller's Office
Division of Audits
PO Box 942850
Sacramento, CA 94250-5874

Dear Mr. Mar:

This letter is provided in response to the draft State Controller Report ("Draft Report") on the Asset Transfer Review for the Redevelopment Agency of the City of Pinole. In the Draft Report, the Controller has indicated that the Redevelopment Agency made unallowable transfers of \$24,514,621 in assets to the City of Pinole ("City"), and is ordering that the City transfer the assets back to the Successor Agency to the Redevelopment Agency.

The City of Pinole disagrees with the findings of the State Controller. As referenced in the Draft Report, the Redevelopment Agency transferred several properties to the City pursuant to City Resolution No. 2011-11 and Agency Resolution No. 05-11. On July 5, 2012, the Superior Court of the State of California entered a Judgment of Validation with respect to asset transfers made by the Redevelopment Agency. A portion of the court decree reads:

"10. All persons are hereby permanently enjoined and restrained from the institution of any action or proceeding challenging, inter alia, the validity of City Resolution No. 2011-11 and Agency Resolution No. 05-11, or any matters herein adjudicated or which at this time could have been adjudicated against the City or Agency and against all other persons, and this judgment shall be forever binding and conclusive as to all such matters."

The City of Pinole believes that the court judgment filed on July 5, 2011 prevents the Controller from requiring that the assets set forth in the Draft Report from being turned over to the Successor Agency for disposition under AB x1 26 and AB 1484. In addition, the City reserves all rights to raise other legal arguments with respect to this report as may be necessary.

Sincerely,

Belinda B. Espinosa

Belinda B. Espinosa
City Manager

2006146.1

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